

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA.,

Plaintiff

VS.

WAUSAU UNDERWRITERS
INSURANCE CO., and LIBERTY
MUTUAL GROUP, INC.,

Defendants

[illegible]

CIVIL ACTION NO. 4:15-CV-586

**NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA.'S MOTION FOR SUMMARY JUDGMENT REGARDING THE
DEFENDANTS' FAILURE TO SETTLE WITHIN THE PRIMARY LIMITS**

TO JUDGE TERRY MEANS:

The Plaintiff, National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”), moves for summary judgment against the Defendants on the Plaintiffs’ claims as asserted in their complaint contained in the notice of removal (Docket entry no. 1). Pursuant to this Court’s requirements, all matters required by Local Rule 56.3(a) are set forth in National Union’s brief, which is being filed concurrently with this motion.

GROUNDS FOR MOTION

This is an insurance case involving a primary insurer's failure to settle within the primary limits of insurance when a valid *Stowers* demand was made.

The underlying lawsuit was a personal injury case involving a skylight manufactured by Wasco Products, Inc. of Maine. The plaintiff in the underlying lawsuit, Steven Landers, fell through the skylight and landed on the floor 35 feet below.

The defense argued that the 15 years statute of repose applied whereas the plaintiff in the underlying lawsuit argued that the law of Maine applied which had no such statute. The trial court held that the law of Maine applied.

After the summary judgment was granted in his favor and just weeks before trial, the plaintiff in the underlying lawsuit issued a *Stowers* demand wherein he offered to settle the case for \$1,000,000, that being within the limits of the primary insurer, Wausau Underwriters, Inc. (“Wausau”). The excess insurer, National Union, demanded that Wausau settle within the primary limits. Wausau failed to do so.

The case was tried to a jury which rendered a verdict in the amount of 33,839,900, wherein Wasco was found to be 45% responsible.

The case was mediated after the verdict and the case settled for an amount in excess of the primary limits. National Union paid the amount in excess of the primary policy’s limits.

National Union is entitled to summary judgment pursuant to the Texas Supreme Court’s decision in *Am. Centennial Ins. Co. v. Canal Ins. Co.*, 843 S.W.2d 480 (Tex. 1992), the Defendants are liable to National Union for the amount paid in excess of the primary limits.

The legal authority in support of the above follows in detail in the brief in support of this motion

WHEREFORE, National Union requests that the Court grants its motion for summary judgment regarding the Defendants’ failure to settle the case within the primary limits of insurance when a valid *Stowers* demand was made. Specifically, National Union prays that the Defendants be found liable to National Union for the amounts paid in excess of the primary limits and for the attorneys’ fees incurred by appellate counsel and by counsel in this declaratory judgment action.

National Union believes that should this Court find in its favor, the parties will be able to work out the amounts owed.

Respectfully submitted,

/s/ Chester J. Makowski

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**ATTORNEYS FOR THE PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2016, a true and correct copy of this document was served on counsel of record for the Defendants as follows:

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